

Of Counsel:
DAMON KEY LEONG KUPCHAK HASTERT
Attorneys at Law
A Law Corporation

ANNA H. OSHIRO 5852-0
aho@hawaiilawyer.com

CHRISTOPHER J.I. LEONG 9662-0
cjil@hawaiilawyer.com

1003 Bishop Street, Suite 1600
Honolulu, HI 96813

www.hawaiilawyer.com

Telephone: (808) 531-8031

Facsimile: (808) 533-2242

Attorneys for Defendants and Third-Party
Plaintiffs DKSL, LLC dba Paramount Builders;
STEVEN LEE, also known as Steven S.
Lee and Steven S. Y. Lee; DANIEL KIM,
also known as Daniel Young Kim and
Young Soo Kim; JULIA KIM, also known
as Julia D. Kim

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

DEVELOPERS SURETY AND
INDEMNITY COMPANY, a California
corporation,

Plaintiff,

vs.

DKSL, LLC dba Paramount Builders, a
Hawaii limited liability company; STEVEN)
LEE, also known as Steven S. Lee and)
Steven S. Y. Lee; DANIEL KIM, also)
[caption continued on next page])

) CIVIL NO. 1:17-cv-00221 JMS-KSC
)
) **THIRD-PARTY COMPLAINT**
) **AGAINST STATE OF HAWAII,**
) **DEPARTMENT OF EDUCATION;**
) **SUMMONS; CERTIFICATE OF**
) **SERVICE**

known as Daniel Young Kim and Young)
 Soo Kim; JULIA KIM, also known as Julia)
 D. Kim; PATRICIA LEE, also known as)
 Patricia Chong Ja Lee,)

Defendants.)

DKSL, LLC dba Paramount Builders, a)
 Hawaii limited liability company; STEVEN)
 LEE; DANIEL KIM; and JULIA KIM,)

Third-Party Plaintiffs,)

vs.)

DEPARTMENT OF EDUCATION, STATE)
 OF HAWAII,)

Third-Party Defendant.)

**THIRD-PARTY COMPLAINT AGAINST STATE
 OF HAWAII, DEPARTMENT OF EDUCATION**

Defendants/Third-Party Plaintiffs DKSL, LLC dba PARAMOUNT BUILDERS (“Paramount”), STEVEN LEE, DANIEL KIM, and JULIA KIM, by and through their attorneys, Damon Key Leong Kupchak Hastert, for their Third-Party Complaint against Third-Party Defendant DEPARTMENT OF EDUCATION, STATE OF HAWAII (“DOE”), allege and aver as follows:

PARTIES

1. Third-Party Plaintiff Paramount is and was at all relevant times a limited liability company organized under the laws of the State of Hawaii.

2. Third-Party Plaintiff Steven Lee is and was at all relevant times an individual and a resident of the City and County of Honolulu, State of Hawaii.

3. Third-Party Plaintiff Daniel Kim is and was at all relevant times an individual and a resident of the City and County of Honolulu, State of Hawaii.

4. Third-Party Plaintiff Julia Kim is and was at all relevant times an individual and a resident of the City and County of Honolulu, State of Hawaii.

5. Third-Party Defendant DOE is and was at all relevant times a governmental entity and department of the Executive Branch of the State of Hawaii.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this Third-Party Complaint pursuant to 28 U.S.C. § 1367(a).

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

FACTUAL ALLEGATIONS

8. On May 17, 2017, Plaintiff DEVELOPERS SURETY AND INDEMNITY COMPANY (“Plaintiff” or “Developers”) filed its Complaint in this Court against Defendants/Third-Party Plaintiffs and Defendant PATRICIA LEE.

9. Plaintiff's Complaint concerns the following three bonds it issued, as surety, to Paramount:

- a. Performance and Payment Bond No. 75086P, dated September 1, 2010 with DKSL LLC dba Paramount Builders (Principal) and State of Hawaii (Obligee) for the Ala Wai Elementary School Building A, B & C – Renovate Restrooms, DOE Job No. Q24001-07 Project (“Ala Wai Project”) in the State of Hawaii with a Bond Penal Sum of \$266,430.00.
- b. Performance and Payment Bond No. 750687 P, dated September 2, 2010 with DKSL LLC dba Paramount Builders (Principal) and State of Hawaii (Obligee) for the Kalakaua Middle School New Locker/Shower Building, DOE Job No. Q21006-07 Project (“Kalakaua Project”) in the State of Hawaii with a Bond Penal Sum of \$2,097,900.00.
- c. Performance and Payment Bond No. 751720P, dated March 26, 2012 with DKSL LLC dba Paramount Builders (Principal) and City and County of Honolulu (Obligee) for the Kokea Street Maintenance Facility Building A Extension of Mezzanine Job No. VI-02-11-C (“Kokea Project”) in the State of Hawaii with a Bond Penal Sum of \$733,000.00.

10. Plaintiff alleges that, as partial consideration for its agreement to furnish the bonds, Plaintiff and Defendants Paramount, Daniel Kim, Julia Kim, Steven Lee, and Patricia Lee executed and entered into a General Indemnity Agreement (“GIA”). Plaintiff further alleges that, under the GIA and applicable law, Plaintiff has the right to pursue claims for losses arising under the bonds, because Defendants agreed to indemnify Plaintiff against all liability for losses, fees, costs, and expenses of any kind incurred as a consequence of issuing the bonds on Paramount’s behalf.

11. Plaintiff then alleges that Paramount failed and/or was unable to meet its obligations under the contracts for the bonded projects described above and, that as a result of Paramount’s failure to meet its obligations, parties have filed and may file claims against the bonds.

12. Plaintiff has also alleged that it has incurred, and will continue to incur, losses, costs, fees, and expenses in investigating and discharging its obligations under the bonds, and that despite repeated demands to Defendants to comply with their indemnity obligations, Defendants have failed and/or refused to perform those obligations.

13. As a result, Plaintiff also alleges that Defendants have been unjustly enriched by their failure to reimburse Plaintiff for its alleged losses.

14. Plaintiff also alleges that Defendants have failed to deposit collateral security to Plaintiff for all losses and expenses to be incurred as a consequence of the claims made against the issued bonds.

15. In May and July of 2014, respectively, the DOE issued Project Acceptance Notices for the Kalakaua Project and the Ala Wai Project. Each project required a number of punch list items to be addressed before completion, but each project was otherwise substantially complete at that time.

16. On or about September 3, 2014, the DOE approved change order number 4 for the Kalakaua Project, increasing the contract price by approximately \$110,076.00.

17. On or about October 1, 2014, Paramount informed the DOE that its contractor's license and Daniel Kim's RME license had lapsed and that Plaintiff would be taking all action necessary to renew said licenses as soon as possible.

18. On or about January 30, 2015, the DOE issued a "Notice to Cure" for the Kalakaua Project, providing "[L]iquidated damages now earned shall be forgiven by DOE subject to the foregoing and for substantial completion of the work by March 31, 2015."

19. On or about May 29, 2015, Paramount's contracts for both the Ala Wai Project and the Kalakaua Project were cancelled.

20. As of the date of termination, the Ala Wai Project was completed and had been in use for some time.

21. As of the date of termination, the Kalakaua Project was approximately 89.91% completed, merely awaiting completion of a few punch list items, which would take a matter of days or weeks.

22. By letter dated July 8, 2015, Paramount informed the DOE that as of June 26, 2015, Plaintiff's license was renewed.

23. After the DOE received notice of Paramount's relicensure, it requested that Paramount obtain a certificate from Hawaii Compliance Express. Despite such certificate not being required, Paramount provided such certificate on September 9, 2015, along with assurances that it was ready, willing, and able to proceed with completion of both projects.

24. Paramount suggested Fall Break as an ideal time to complete the few remaining punch list items; however, the DOE never responded to Paramount's suggestion.

25. To date, despite numerous requests, the DOE has refused to allow Paramount into the respective school facilities to complete the outstanding punch list items.

26. To date, the DOE has failed to pay Paramount the remaining amounts it is owed for both projects.

27. Thus, if Plaintiff has been damaged as alleged in the Complaint, Plaintiff's damages were and are the proximate result of the actions, omissions, and/or negligent and wrongful conduct of the DOE in refusing to allow Paramount to complete the remainder of the two projects and in refusing to pay Paramount the remaining amounts it is owed, and not the fault of Paramount.

28. If any judgment is recovered by Plaintiff on its Complaint against Paramount, such damages, costs, expenses, and attorneys' fees will have been caused by the DOE, in which case the DOE is entitled to defense, indemnification, reimbursement, and/or contribution from the DOE.

WHEREFORE, Third-Party Plaintiffs pray as follows:

A. That Plaintiff's Complaint against Third-Party Plaintiffs be dismissed and that Third-Party Plaintiffs be awarded their attorneys' fees and costs incurred herein;

B. That if Plaintiff is entitled to any judgment, such judgment be rendered against the DOE and not Third-Party Plaintiffs;

C. That the DOE be determined liable to indemnify and/or reimburse Third-Party Plaintiffs, and/or make contribution to any judgment that may be rendered against Third-Party Plaintiffs; and

D. That Third-Party Plaintiffs be awarded such other and further relief as the Court may deem just and proper.

DATED: Honolulu, Hawaii, August 1, 2017.

/s/ Anna H. Oshiro

ANNA H. OSHIRO

CHRISTOPHER J.I. LEONG

Attorneys for Defendants

DKSL, LLC dba Paramount Builders;

STEVEN LEE, also known as Steven S.

Lee and Steven S. Y. Lee; DANIEL KIM,

also known as Daniel Young Kim and

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